

REMARKS

The Official Action of March 31, 2003, and the prior art cited and applied therein have been carefully reviewed. The claims in the application are now claims 1-7 and 9-15, of which claims 1-6 and 11-14 fall within the elected subject matter. Applicant's claims define novel and unobvious subject matter and should be allowed. Applicant accordingly respectfully requests favorable reconsideration and allowance.

Acknowledgement by the PTO of the receipt of applicant's papers filed under §119 is noted.

The restriction requirement, originally made orally, has been repeated. Applicant again respectfully traverses such requirement, i.e. the oral election of Group I is affirmed with traverse.

The process cannot be used to make another product, let alone one which is **materially** different, because the main process, let alone one which is **materially** different, claim 7 depends from and incorporates the subject matter of claim 1. The product cannot be made by another process because the product is defined as a woven product. Withdrawal of the restriction requirement and examination of all the claims on the merits are respectfully requested.

Claim 1 has been objected to for inclusion of phraseology "wherein it is made from", and the examiner has suggested more traditional language. In deference to the examiner's views, the transitional language in claim 1 has been amended. No limitations have been introduced by this amendment and none are intended.

Claims 1-6 and 11 have been rejected under the second paragraph of §112. This rejection is respectfully traversed.

The term "(PES)" means "polyester". It has been deleted in deference to the examiner's views, along with the parentheses surrounding "continuous filament yarn".

Applicant disagrees with the conclusion expressed in the Office Action that the term "yarn" can only refer to a combination of multiple threads, and cannot relate to a monofilament. Attached hereto is a copy of page 1525 from the desk dictionary of undersigned, i.e. the Random House College Dictionary, Revised Edition (1975), which clearly indicates that a yarn can be a "continuous strand". A "strand" can of course be a monofilament. As yarns are used in weaving, and as applicant's awning is a woven product, the appropriate generic term would appear to be the selected term "yarn".

Applicant does not fully understand the first part of the last sentence of part 7 appearing at the middle of page

4 of the Official Action, but applicant does agree that clauses starting with "particularly" are not consistent with U.S. practice. Accordingly, appropriate amendments have been made in claims 3 and 11 in this regard.

Notwithstanding the amendments made above, applicant believes that the claims as originally drafted, considered in light of applicant's specification (fully consistent with the law), would not have been confusing to those skilled in the art, and therefore the claims in their previous form are fully in accordance with §112. At **worst**, some claim language in its previous form might be considered objectionable, but **only** as to form.

Nevertheless, as indicated above, and again in deference to the examiner's views and to minimize needless argument, a number of cosmetic amendments have been made above. Such amendments are of a formal nature only, i.e. made to place the claims in better form consistent with U.S. practice (with respect to deletion of the clauses starting with the word "particularly") or to otherwise improve the form of the claims. The amendments are not "narrowing" amendments because the scope of the claims has not been reduced in these regards.

Applicant respectfully requests withdrawal of the rejection.

Claim 1 has been rejected under §102 as being anticipated by Geisel USP 5,674,437 (Geisel). This rejection is respectfully traversed.

The present invention is directed to a woven awning fabric. Applicant does not see that Geisel discloses a woven awning fabric. The closest Geisel comes, as pointed out in the rejection, is the mention of a luminescent fibrous material for "awnings" at column 5, line 14, and such luminescent material "for textile use, textile and textile goods."

Claim 1 is moreover directed to such a fabric made from **polyester** continuous filament yarn and/or **polyester** monofilament yarn. Applicant does not see that Geisel discloses such a fabric. However, as pointed out in the rejection, Geisel at column 3, line 23, mentions only "monofilaments".

Claim 1 is further directed to such a fabric wherein the polyester continuous filament yarn and/or polyester monofilament yarn is a wet-dyed polyester. Applicant does not see that this either is disclose by Geisel.

Instead, Geisel relates to a luminescent extruded fiber comprising 80-99% by weight of a thermoplastic, with the additional materials including a metal aluminate oxide pigment and plasticizer (column 2, lines 49-53). The thermoplastic

may be any one of a number of thermoplastics noting column 3, lines 26-33, polyester **not** being mentioned.

A rejection based on §102 cannot take bits and pieces from different locations in a reference and put them together to fashion an anticipation rejection. Textiles, awnings and monofilaments all appear in different locations.

Moreover, Geisel in any event does not show polyester and does not show wet-dyed polyester.

The rejection should be withdrawn and such is respectfully requested.

Claims 1 and 4 have been rejected under §102 as anticipated by Xiao et al USP 5,747,392 (Xiao). This rejection is respectfully traversed.

Xiao is directed to a water repellent, stain resistant, weatherable coated fabric wherein the coating is composed of both acrylic and polyurethane lattices also including a cross linker (see the Abstract). Such a fabric may be used for "sun awnings, lawn and patio umbrellas, boat covers, and the like" (Column 4, lines 5 and 6).

The rejection states that the awning fabric of Xiao comprises continuous polyester fibers. Applicant sees no such disclosure. Instead, column 4, lines 17-24 reads as follows:

The subject coatings are aqueous dispersions which may be applied to synthetic textile fabrics in one or more passes to provide

treated fabrics with the physical properties desired. By the term "synthetic fabric" is meant a fabric containing at least 40 weight % of synthetic polymer fibers, i.e. nylon fibers, polyester fibers, and the like. The fibers useful in the present invention are preferably those which can be transfer-printed. The textile fabrics are woven.

There is no disclosure of what is called for in claims 1 and 4, and particularly polyester continuous filament yarn or a polyester monofilament yarn, let alone such a yarn which is wet-dyed.

Withdrawal of the rejection is in order and is respectfully requested.

Claim 6 has been alternatively rejected under §102 as anticipated by Geisel or obvious under §103 from Geisel. Moreover, claim 6 is alternatively rejected under §102 as anticipated by Xiao or alternatively obvious under §103 from Xiao. These rejections are respectfully traversed.

Insofar as the rejections are based on §102, claim 6 is dependent on and incorporates the subject matter of claims 5, 4 and 1. As neither reference anticipates claim 1, let alone the features added in each of claim 4, 5 and 6, neither reference anticipates claim 6.

As regards the feature added in the dependent portion of claim 6, the rejection assumes fibers which have a round cross section. But this is improper for two reasons.

First, the fibers must not only be round in cross section, but must also be continuous filament or monofilament; round without being continuous filament or monofilament is inadequate. Secondly, many fibers are produced of cross section other than round, and inherency may not be relied upon unless it is reasonably certain, *In re Brink*, 164 USPQ 247, 249.

The rejections insofar as they are based on §102 should therefore be withdrawn, and such is respectfully requested.

Insofar as the rejections are based on §103, applicant respectfully notes that it is not the selection of one feature which provides the improved results of the present invention, but instead the combination of various factors. The selection of polyester, together with the nature of the yarn (continuous filament or monofilament), together with the yarn having been wet-dyed, all as called for in claim 1, provides an exceptional product, and making the filament cross section round contributes (in combination with the aforementioned features) further to a superior product.

The new product according to the present invention has astonishing new properties and advantages, namely essentially the following:

- The wet-dyeing of the awning fabric is completely independent from the production of the filaments so that it is possible to obtain colors as desired by the applicant for the awnings independent of the color range of the producer of the filaments, as it has been up to now.

- The surface of the fabric is silk-like smooth. Therefore a very neat appearance is obtained as it was not known for awnings up to now and the smooth surface prevents the pollution of the awning.

- The elasticity is higher than previously known and therefore cuttings formed at the occasion of winding-up the awning are avoided.

- Tear-resistance is twice as high as with conventional awnings.

- There is a certain transparency for visual light which leads to a friendly atmosphere whereas ultraviolet radiation is kept out.

Attached hereto are a few fabric examples of the awning fabric according to the present invention. Inspection of these samples will reveal the unobvious nature of the present invention. Applicant respectfully requests withdrawal of the rejections.

Claims 2 and 11 have been rejected as obvious under §103 from Xiao. This rejection is respectfully traversed.

First, claims 2 and 11 depend from and incorporate the subject matter of claim 1, and thus define over Xiao for the reasons pointed out above. Moreover, as the rejection points out, the polyester fabric described at the bottom of column 15 of Xiao has a weight which exceeds the weight called for in claim 2, even before its impregnation. Therefore, if anything, Xiao teaches away from the dependent portion of claim 2.

Furthermore, after impregnation, the polyester fabric of Xiao will weigh even more than 278 g/m², it being noted that solids take up is 4-5% relative to the weight of the uncoated fabric, i.e. the resultant coated fabric will weigh a minimum of about 290 g/m².

With respect to the commentary of the rejection concerning claim 11, applicant does not understand where the prior art indicates that "[s]uch a modification would have been motivated by the desire to render the awning more commercially successful." If this comes from anywhere, it comes from applicant's disclosure, not from any known prior art.

Applicant respectfully requests withdrawal of the rejection.

Claims 3-5 have been rejected as obvious under §103 from Xiao in view of Reinert et al USP 5,914,444 (Reinert). This rejection is respectfully traversed.

Xiao has been discussed above, and its deficiencies pointed out. Reinert does not make up for those deficiencies, and has not been cited to do so. Therefore, even if the combination were obvious, it would not reach claims 3-5 which incorporate the subject matter of claim 1.

Moreover, Reinert describes a process of dyeing **cellulose** filaments by wet-dyeing. This clearly has nothing to do with wet-dyeing polyester. The person of ordinary skill in the art would have had no reason or basis for considering combining of these two documents which have no relation to one another, dealing with totally different materials.

Withdrawal of the rejection is in order and is respectfully requested.

New claims 12-15 have been added, and these are patentable for the same reasons as pointed out above. Claim 12 merely adds what was deleted from claim 11. Claim 13 is a new independent claim which adds more detail consistent with the present invention. Claim 14 depends from and incorporates the subject matter of claim 13, including the feature of the inclusion of a very small amount of delustrants and lubricants, if any, far below the usual amounts present in

Polyester filaments. Claim 15 is a new method claim, presently non-elected; but, for the reasons indicated above, the restriction requirement should be withdrawn and claim 15 should be examined along with the other method claims.

The prior art documents of record and not applied have been noted, along with the implication that such documents are deemed by the PTO to be insufficiently pertinent to warrant their application against any of applicant's claims.

Favorable reconsideration and allowance are earnestly solicited.

Respectfully submitted,

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Yap (yäp, yap), *n.* one of the Caroline Islands, in the W Pacific: U.S. cable station. 7625 including adjacent islands (1970); 83 sq. mi.

ya·pon (yä'pon), *n.* yaupon.

Ya·pu·rá (Sp. yä/pöö rä'), *n.* Japura.

Ya·qui (yä/kē), *n., pl.* -quis, (esp. collectively) -qui for 1. 1. a member of a Pima Indian people of Sonora, Mexico. 2. the language of the Yaqui Indians. 3. a river in NW Mexico, flowing into the Gulf of California. 420 mi. long.

yar (yär), *n.* yare (defs. 1, 2).

Yar·bor·ough (yär/bür/ō, -bur/ō or, esp. Brit., -ber ə), *n.* Whist. Bridge, a hand in which none of the cards is higher than a nine. [named after the 2nd Earl of Yarborough (d. 1897), said to have bet 1000 to 1 against its occurrence]

yard¹ (yärd), *n.* 1. a common unit of linear measure in English-speaking countries, equal to 3 feet or 36 inches, and equivalent to 0.9144 meter. 2. Naut. a long spar, supported more or less at its center, to which the head of a square sail, lateen sail, or lugsail is bent. [ME yerd(e), OE (Anglian) gerd; c. D gard, G Gerte rod]

yard² (yärd), *n.* 1. an area, usually planted with grass, adjacent to a house. 2. a partially or wholly paved open area adjacent to or enclosed by a building or buildings. 3. a relatively open area containing various structures and used for work or storage purposes (often used in combination): brickyard; railroad yard. 4. a pen or other enclosure for livestock. 5. the winter pasture of moose and deer. 6. the Yard, Brit. Informal. See Scotland Yard. —v.t. 7. to put into or enclose in a yard. [ME yerd, OE geard enclosure; c. D gaard garden, Icel garðr yard, Goth gards house (OSlav grad, Russ gorod town, prob. < Gmc), L hortus garden, OIr gort field; akin to GARDEN]

yard·age¹ (yär'dij), *n.* measurement, or the amount measured in yards. [YARD¹ + -AGE]

yard·age² (yär'dij), *n.* 1. the use of a yard or enclosure, as in loading or unloading cattle or other livestock at a railroad station. 2. the charge for such use. [YARD² + -AGE]

yard·arm (yärd'är'm'), *n.* Naut. either of the outer portions of the yard of a square sail.

yard·bird (yärd'bürd'), *n.* Slang. 1. an army recruit or inductee, esp. one assigned to menial tasks at a training center. 2. a convict.

yard' goods'. See piece goods.

yard' grass', a coarse annual grass, *Eleusine indica*, of the Old World, common in dooryards and fields.

yard·man (yärd'män), *n., pl.* -men. a man who works in a railroad yard, shipyard, or the like.

yard·mas·ter (yärd'mäs'tär, -mä'stär), *n.* a person who superintends all or part of a railroad yard.

yard·stick (yärd'stik'), *n.* 1. a measuring stick a yard long. 2. any standard of measurement or judgment: Test scores are not the only yardstick of academic achievement.

yare (yär or, esp. for 1, 2, yär), *adj.*, yar·er, yar·est. 1. quick; agile; lively. 2. (of a ship) quick to the helm; easily handled or maneuvered. 3. Archaic. a. ready; prepared. b. nimble; quick. Also, yar (for defs. 1, 2). [ME; OE gearu, gearo = ge- y- + earu ready; c. D gaar, G gar done, dressed (as meat)] —yare/ly, *adv.*

Yarkand (yär'känd'), *n.* Soche.

Yarmouth (yär'mooth), *n.* 1. a seaport in SW Nova Scotia, in SE Canada: summer resort. 8636 (1961). 2. Great. See Great Yarmouth.

Yar·muk (yär möök'), *n.* a river in NW Jordan, flowing W into the Jordan River. 50 mi. long.

yar·mul·ke (yär'mul ke, yä'mel-), *n.* Judaism. a man's skullcap, worn esp. during prayer and religious study. Also, yar'mel·ke. [< Yiddish << Turk yağmurluk rain-coat]

yarn (yärn), *n.* 1. thread made of natural or synthetic fibers and used for knitting or weaving. 2. a continuous strand or thread made from glass, metal, plastic, etc. 3. the thread, in the form of a loosely twisted aggregate of fibers, as of hemp, of which rope is made. 4. Informal. a tale, esp. a long story of adventure or incredible happenings. —v.i. 5. Informal. to spin a yarn; tell stories. [ME; OE gearn; c. G Garn; akin to Icel görn gut, Gk chordē intestine, chord, Lith žarnā entrails, L hernia a rupture, Skt hirā vein]

yarn-dyed (yärn'did'), *adj.* (of fabrics) woven from yarns previously dyed (opposed to piece-dyed).

Yá·ro·slavl (yä'ro släv'lä), *n.* a city in the W RSFSR, in the central Soviet Union in Europe, on the Volga. 467,000 (est. 1964).

yar·row (yar'ō), *n.* 1. an asteraceous plant, *Achillea millefolium*, of Europe and America, having finely divided leaves and whitish flowers, sometimes used in medicine as a tonic and astringent. 2. any of various other plants of the genus *Achillea*. [ME yar(o)we, OE gearwe; c. G. Garbe sheaf]

yash·mak (yäsh mäk', yash'mak), *n.* the veil worn by Muslim women in public. Also, yash·mac'. [< Turk yaşmak]

Yas·sy (yä'së), *n.* Jassy.

yat·a·ghan (yat/ə gan', -gən; Turk. yä/tä gän'), *n.* a Turkish saber having a doubly curved blade, concave toward the hilt, and a hilt with a prominent pommel and no guard. Also, ataghan, yat'a·gan'. [< Turk yätäghan]

vauld (yöld, yöld, yäd, yäld), *adj.* Scot. and North Eng. active; vigorous. [?]

Yaun·de (youn'dä), *n.* Yaoundé.

yawp (yäp, yäp), *v.i., n.* yawp. —yawp'er, *n.*

yau·pon (yöö'pən), *n.* a holly shrub or small tree, *Ilex vomitoria*, of the southern U.S., having leaves that are sometimes used as a substitute for tea. Also, yapon. [< Catawba yopun = yop shrub, bush, tree + -un dim. suffix]

yaw (yä), *v.i.* 1. to deviate temporarily from a straight course, as a vessel. 2. (of an aircraft) to have a motion about its vertical axis. 3. (of a rocket or guided missile) to deviate from a stable flight attitude by oscillation of the longitudinal axis in the horizontal plane. —v.t. 4. to cause to yaw. —n. 5. the movement of yawing. [?]

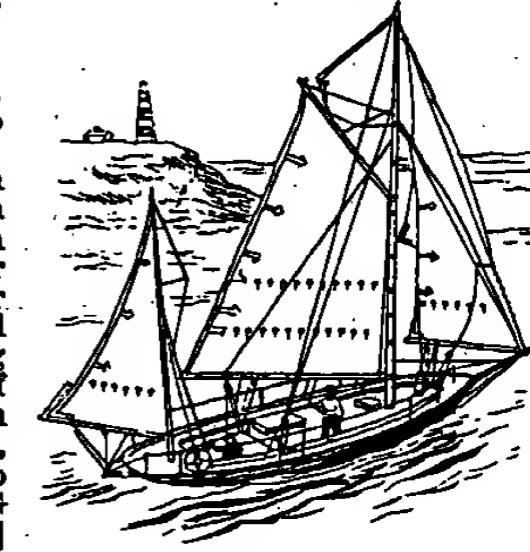
Ya·wa·ta (yä'wä tä'), *n.* a former city, now part of Kitakyushu, on N Kyushu, in SW Japan: steel industry. Also, Yahata.

act. able, däre, ärt; ebb, equal; if, ice; hot, over, order; oil; böök; ööze; out; up, urge; ö = a as in alone; chief;

yawl¹ (yöö'l), *n.* 1. a ship's small boat, manned by four or six oarsmen. 2. a two-masted, fore-and-aft-rigged sailing vessel having a large mainmast and a smaller jiggermast or mizzenmast stepped abaft the sternpost. Cf. ketch. [< D jol kind of boat < ?]

yawl² (yöö'l), *n., v.i., v.t.* Brit. Dial. yowl; howl. [akin to yowl]

yawn (yöö'n), *v.i.* 1. to open the mouth involuntarily with a prolonged, deep inhalation of air, as from drowsiness or weariness. 2. to extend or stretch wide, as an open and deep space or a widely gaping aperture. —n. 3. the act of yawning. 4. an opening; open space; chasm. [ME yane(n), yone(n), OE geonian; akin to OE gānian, gānan, Icel gīna, G gähnen. L hiāre to gape.] —yawn'er, *n.* —Syn. 1. gape.



Yawl¹ (def. 2)

yawp (yööp, yäp), *v.i.* 1. Informal. to utter a loud, harsh cry; yelp, squawk, or bawl. 2. Slang. to talk noisily and foolishly. —n. 3. Informal. a harsh cry. 4. raucous or querulous speech. Also, yaup. [ME yolp(en); akin to YELP] —yawp'er, *n.*

yaws (yööz), *n. (construed as sing.)* Pathol. a disease occurring in certain tropical regions, caused by the organism *Treponema pertenue*, and characterized by an eruption of raspberrylike excrescences on the skin. Also called fram-besia, pian. [< Carib dial.]

y-ax·is (wi/ak/sis), *n., pl.* y-ax·es (wi/ak/sēz). Math. 1. (in a plane Cartesian coordinate system) the axis, usually vertical, along which the ordinate is measured and from which the abscissa is measured. 2. (in a three-dimensional Cartesian coordinate system) the axis along which values of y are measured and at which both x and z equal zero.

Yaz·oo (yaz'oo), *n.* a river flowing SW from N Mississippi into the Mississippi River at Vicksburg. 188 mi. long.

Yb, *Chem.* ytterbium.

Y chromosome, Biol. a sex chromosome carrying genes that produce male characteristics in humans and most mammals and that occurs singly and only in males. Cf. X chromosome.

y-clept (ë klept'), *v.* a pp. of clepe. Also, y-cleped'. [ME ycleped, OE geclypod, ptp. of clypian, cleopian, to CLEPE]

yd., *yard; yards.*

yds., *yards.*

ye¹ (yë), *pron.* Archaic, Literary, or Brit. Dial. 1. (used nominatively as the plural of thou): O ye of little faith; ye brooks and hills. 2. (used nominatively for the second person singular.) 3. (used objectively in the second person singular or plural.) [ME; OE ge; c. D gij, Icel ér, Goth jus]

ye² (thë; spelling pron. yë), *definite article.* Archaic. the¹.

yea (yä), *adv.* 1. yes (used in affirmation or assent). 2. Archaic. a. indeed: Yea, and he did come. b. not only this but even: a good, yea, a noble man. —n. 3. an affirmative reply or vote; affirmation. 4. a person who votes in the affirmative: The yeas outnumbered those who voted against the bill. [ME ye, ya, OE gēa; c. D, G, Icel, Goth ja]

yeah (yä), *adv.* Informal. yes. [var. of YEA or YES]

yean (yén), *v.i.* (of a sheep or goat) to bring forth young. [ME yene(n), OE geēanian to bring forth young; akin to EWE]

yean·ling (yén/ling), *n.* 1. the young of a sheep or a goat; a lamb or a kid. —adj. 2. just born; infant.

year (yér), *n.* 1. a period of 365 or 366 days, now commonly divided into 12 calendar months and reckoned as beginning Jan. 1 and ending Dec. 31 (calendar year). Cf. common year, leap year. 2. a period of approximately this length: It happened five years ago. 3. Astron. a. Also called lunar year. a division of time equal to 12 lunar months. b. Also called astronomical year, equinoctial year, solar year, tropical year. a division of time equal to the interval between one vernal equinox and the next.

c. Also called sidereal year. a division of time representing the time required for the earth to complete one revolution around the sun, measured with relation to the fixed stars. 4. the time in which any planet completes a revolution around the sun: the Martian year. 5. a period out of every 12 months devoted to a certain pursuit, activity, or the like: the academic year. 6. years, a. age. b. old age: a man of years. 7. year in and year out, regularly through the years; continually. Also, year in, year out. [ME yeer, OE gēar; c. D jaar, G Jahr, Icel ár, Goth jér, Gk hōros a year, hōra a season of the year, part of a day, hour]

year-a-round (yér'ə round'), *adj.* year-round.

year-book (yér'bök'), *n.* 1. a book published annually, containing information about the past year. 2. a book published by the graduating class of a high school or college, containing photographs of class members and commemorating school activities, studies, etc.

year-end (yér'end'), *n.* 1. the end of a calendar year.

—adj. 2. taking place or done at the year-end.

year-ling (yér/ling), *n.* 1. an animal in its second year.

2. a horse one year old, dating from January 1 of the year after the year of foaling. —adj. 3. being a year old. 4. of a year's duration or standing. [late ME; c. G Jährling]

year-long (yér/lōng', -lōng'), *adj.* lasting for a year.

year-ly (yér/lē), *adj., adv., n., pl.* -lies. —adj. 1. pertaining to a year or to each year. 2. occurring, arriving, etc., once a year or each year. —adv. 3. once a year; annually. —n. 4. a publication appearing once a year. [ME yeerly, OE gearlic]

yearn (yürn), *v.i.* 1. to have an earnest or strong desire. 2. to feel tenderness or affection. [ME yerne(n), OE giernan < georn eager; akin to Icel gíra to desire (perh. L hortari to urge), Olr (to)-gairim I desire; Gk chair(ein) to rejoice, Skt hāryati he desires]. —yearn'er, *n.* —Syn. 1. aspire.

yearn·ing (yürning), *n.* deep longing, esp. when accom-

—act. able, däre, ärt; ebb, equal; if, ice; hot, over, order; oil; böök; ööze; out; up, urge; ö = a as in alone; chief; side the front cover.